IN THE

Supreme Court of the United States

OCTOBER TERM, 1940

No. 81

JULIAN RILEY and HUGHES SPALDING, EXECUTORS OF THE ESTATE OF JULIA M. HUNGERFORD, DECEASED,

Petitioners,

vs.

THE NEW YORK TRUST COMPANY, ADMINISTRATOR C. T. A. OF THE ESTATE OF JULIA M. HUNGERFORD, DECEASED,

and

COCA-COLA INTERNATIONAL CORPORATION,

and

THE NEW YORK TRUST COMPANY, TEMPORARY ADMINISTRATOR OF THE ESTATE OF JULIA M. HUNGERFORD, DECEASED.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF DELAWARE AND SUPPORTING BRIEF

DAN MACDOUGALD,
JAMES A. BRANCH,
ROBERT S. SAMS,
Atlanta, Georgia;

AARON FINGER,
Wilmington, Delaware,
Attorneys for Petitioners.

Of Counsel:
MACDOUGALD, TROUTMAN & ARKWRIGHT,
Atlanta, Georgia.
RICHARDS, LAYTON & FINGER,
Wilmington, Delaware.

INDEX

Page

PETITION FOR WRIT OF CERTIORARI

I Summary and Short Statement of matter involved 2
II Jurisdiction of this Court 5
How and when the Federal question was raised 6
III The question presented 7
IV Reasons relied on for the allowance of the writ 7
Prayer for writ 9

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

Opinions of the Courts below 11
Jurisdiction 11
Statement of the case 11
Specification of errors 11
Summary of argument 12

Argument:

1. The Georgia judgment was rendered by a court which had jurisdiction over the subject matter and also jurisdiction over the parties by personal service 12

2. Since all persons who could have any possible interest in the succession were parties to the Georgia judgment, that judgment was binding upon all the world in any contest relating to the succession to the title to any personalty of decedent 12

3. The litigation in the Delaware courts involved the succession to the title to personalty of the decedent, consisting of shares of stock of a Delaware corporation. The Georgia judgment was therefore conclusive and entitled to full faith and credit in the Delaware courts 12

Page

4. The Delaware courts did not give full faith and credit to the Georgia judgment by readjudicating the question of decedent's domicile (over the objection of the Executors) in a contest involving nothing more than the succession to the title to assets of decedent 13

The Supreme Court of Georgia had held that the jurisdiction of the Georgia courts depended upon a determination of the factual issue of domicile and that the court had jurisdiction to determine that issue 14

5. Where a court's jurisdiction depends upon a particular fact and the court determines that factual question, the parties are bound and the judgment is entitled to full faith and credit in other states 14

6. The Georgia judgment was binding on the New York Administrator in a contest in Delaware for succession to the title to personalty of the decedent, although the New York Administrator was not a party to the judgment, because

(a) The New York Administrator was not entitled to be a party; 15

(b) A party to the Georgia proceeding could not have an administrator appointed in New York, in *ex parte* proceedings, during the progress of the Georgia proceeding, and thereby in effect nullify, in other States, the decision of the Georgia courts upon the factual issue of domicile; 15

(c) The New York Administrator acquired no interest in the succession above and unrelated to the interests of a distributee and neither the State of New York nor anyone else claiming as a creditor is affected by the finding of a domicile in the Georgia proceeding; 15

Page

(d) Since a creditor is not entitled to be heard on the probate of a will, he cannot, after the succession has been determined, dispute the title or right of possession of the personal representative whose title has been established in the probate proceeding; 15

(e) Since the Georgia judgment is binding upon all possible distributees, it is also binding on the New York Administrator as representative of the distributees, and, under the circumstances, the New York Administrator is the same person in law as decedent's husband, one of the distributees, who initiated the proceedings for the appointment of the New York Administrator, he having been a party to and participated in the Georgia litigation to its final conclusion. 16

7. The Georgia judgment determined that the Georgia administration was domiciliary and not local. Such a judgment is conclusive where all persons interested in the distribution of the estate are parties 17

8. The Delaware Supreme Court did not first determine whether the Georgia judgment was conclusive, as was its duty, but examined the question of domicile and then proceeded to hold that the New York Administrator was entitled to the stock *because of its finding of a New York domicile for decedent* 17

Conclusion 18

CASES AND TEXT CITED

	Page
Andrews v. Andrews, 188 U. S. 14	6
Baker v. Baker, Eccles & Co., 242 U. S. 394; 162 Ky. 683; 173 S. W. 109; L.R.A. 1917C, p. 171	6, 8, 13, 17
Burbank v. Ernst, 232 U. S. 162	8, 13, 17
Carpenter v. Strange, 141 U. S. 87, 103	6
Chicago, Rock Island & Pacific Rwy. Co. v. Schendel, 270 U. S. 611	16
Davis v. Davis, 305 U. S. 32	6, 9, 14
Dunsmuir v. Scott, 217 Fed. 200	16
Fischer's Est. In re, 180 Atl. 633 (N. J.)	8, 13, 17
Gibson, Lucy Haines v. Solomon, 136 Ohio St. 101, 23 N. E. (2d) 996; 125 A.L.R. 903	16
Great Western Telegraph Co. v. Purdy, 162 U. S. 329, 334	6
Hooks v. Brown, 125 Ga. 122, 53 S. E. 583	16
Keith v. Willers Truck Service, Inc., 266 N. W. 256 (S. D.); 104 A.L.R. 1471	16
Maybin v. Knighton, 67 Ga. 103	12
Overby v. Gordon, 177 U. S. 214	8, 13, 17
Roberts v. Bathurst, 112 Fed. (2d) 543 (5 C.C.A.)	17
Schouler on Wills, Vol. 2, p. 846, Sec. 746	16
Sovereign Camp of Woodmen of the World v. Bolin, et al., 305 U. S. 66	9, 14
St. Louis-S.F.R. Co. v. Stuckwish, 137 Okla. 251; 279 Pac. 683	16
Stoll v. Gottlieb, 305 U. S. 165	6, 9, 14
Tant v. Wigfall, 65 Ga. 412	12
Thomas v. Morrisett, 76 Ga. 384	8, 13, 17
Thormann v. Frame, 176 U. S. 350	8, 13, 17
Tilt v. Kelsey, 207 U. S. 43	6, 8, 13, 16, 17
Veatch v. Rice, 131 U. S. 293	12
Willett's Appeal, In re, 50 Conn. 330	8, 13, 17

STATUTES CITED

28 U.S.C.A., Sec. 344 (b) —Sec. 237 (b), Judicial Code 5

IN THE

Supreme Court of the United States

OCTOBER TERM, 1940

No. _____

JULIAN RILEY and HUGHES SPALDING, EXECUTORS OF THE ESTATE OF JULIA M. HUNGERFORD, DECEASED,

Petitioners,

vs.

THE NEW YORK TRUST COMPANY, ADMINISTRATOR C. T. A. OF THE ESTATE OF JULIA M. HUNGERFORD, DECEASED,

and

COCA-COLA INTERNATIONAL CORPORATION,

and

THE NEW YORK TRUST COMPANY, TEMPORARY ADMINISTRATOR OF THE ESTATE OF JULIA M. HUNGERFORD, DECEASED.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF DELAWARE AND SUPPORTING BRIEF

To the Honorable The Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioners, Julian Riley and Hughes Spalding, Executors of the Estate of Julia M. Hungerford, deceased, respectfully pray that a writ of certiorari issue to the Supreme Court of the State of Delaware to review a final decree of that court entered February 14, 1941. A certified transcript of the record in the case, including the proceed-

ings in the Supreme Court of Delaware, accompanies this petition in accordance with the rules of this Court.

I.

Summary and Short Statement of Matter Involved

This petition involves the question whether the Supreme Court of Delaware gave full faith and credit to a judgment of the Court of Ordinary of Fulton County, Georgia. The question arose in an interpleader suit instituted by Coca-Cola International Corporation, a Delaware corporation, against petitioners and The New York Trust Company, as Temporary Administrator by appointment of a surrogate's court in New York in *ex parte* proceedings. The interpleader suit involved the succession to a decedent's title to stock in the Delaware corporation, rival demands for a transfer of the stock having been made on the corporation by petitioners, as the Executors named in decedent's Will, and by said Administrator. There being no creditor in Delaware and no question as to local administration, the respective claimants were required to interplead between themselves as to their respective claims to the stock, consisting of 626 shares of the Class A and 626 shares of the common stock of Coca-Cola International Corporation owned by Julia M. Hungerford at the time of her death. Petitioners, in their pleading in the nature of a bill of complaint (R. 13-50, 91-112) asserted title to the stock by virtue of a judgment of the Court of Ordinary of Fulton County, Georgia, as finally affirmed by the Supreme Court of Georgia. The Georgia judgment was rendered in *inter partes* probate proceedings to which all persons interested in the succession (including decedent's husband), either as beneficiaries under the Will or as distributees in the event of intestacy, were served personally. The Georgia judgment established that decedent was domiciled in Fulton County,

Georgia, at the time of her death, admitted the Will to probate and established Fulton County, Georgia, as the seat of general or domiciliary administration of the estate. The judgment was affirmed by the Supreme Court of Georgia in an opinion holding that the probate was a general probate and that the finding of domicile was essential to the jurisdiction of the Fulton County Court of Ordinary. (*Hungerford v. Spalding*, 183 Ga. 547, 189 S. E. 2; R. 105-110).

In the probate proceedings, Hungerford (decedent's husband) filed a caveat alleging want of testamentary capacity and also that decedent was domiciled in the State of New York at the time of her death. After hearing, judgment was entered overruling the caveat, admitting the Will as duly probated in solemn form and adjudging that decedent died domiciled in Fulton County, Georgia. The Executors thereupon qualified as general or domiciliary representatives of the estate. Upon appeal by Hungerford to the Superior Court of Fulton County, Georgia (R. 40), his caveat was tried de novo (R. 17-18). A jury found that decedent had testamentary capacity and was domiciled in Fulton County, Georgia, at the time of her death and judgment was entered accordingly. (R. 48-49). A motion by Hungerford for a new trial was overruled (R. 95-99) and he then appealed to the Supreme Court of Georgia, which court affirmed the judgment of the Superior Court. (R. 105-110; *Hungerford v. Spalding*, 183 Ga. 547, 189 S. E. 2). The principal ground of error urged by Hungerford was that the trial court should not have made a finding as to decedent's domicile, but the Supreme Court of Georgia held, *inter alia*, that the finding was proper because the jurisdiction of the Fulton County Court of Ordinary depended upon decedent's domicile in that county at the time of her death.

While the Georgia litigation was in progress Hungerford

instituted *ex parte* proceedings in a surrogate's court in New York which resulted in the appointment of The New York Trust Company as Temporary Administrator, and after the decision of the Supreme Court of Georgia, the surrogate's court appointed The New York Trust Company as Administrator c. t. a., also in *ex parte* proceedings, following which the Administrator c. t. a. was made a party to the Delaware interpleader proceeding.

Upon final hearing in the Delaware court, petitioners introduced in evidence duly exemplified copies of the Georgia judgment and proceedings and objected to the introduction of any evidence as to decedent's domicile, on the ground that the Georgia judgment was entitled to full faith and credit and established the right and title of the Executors to the stock. The trial court admitted evidence of both sides on the subject of domicile, subject to the objection of petitioners, reserving for later decision the questions raised by petitioners as to the effect of the Georgia judgment. Subsequently the trial court filed an opinion finding that decedent died a resident of Fulton County, Georgia (R. 150-181), and that it therefore was unnecessary to pass upon the effect of the Georgia judgment, and the trial court made no decision on the question. Upon appeal by the Administrator c. t. a. to the Supreme Court of Delaware that court reversed the trial court. Instead of first determining whether the Georgia judgment permitted an inquiry into the question of domicile, the Delaware Supreme Court reviewed the evidence and reversed the trial court on the question of fact as to decedent's residence and domicile at the time of her death, holding that the evidence showed that decedent died domiciled in New York. *On the basis of that finding* the court held that the Administrator c. t. a. was entitled to the stock and that the Georgia judgment was not binding upon it on the ground that it was not a party to or in privity with

a party to the Georgia proceedings. The decision was by three justices. One justice dissented and another justice who sat during the argument did not participate in the decision. A motion for reargument (R. 232-235) urging that the court's decision would deny full faith and credit to the Georgia judgment was overruled without opinion and a final decree was entered on February 14, 1941 (R: 235-240).

II.

Jurisdiction of This Court

The basis of this Court's jurisdiction is Section 237 (b) of the Judicial Code (28 U.S.C.A., Sec. 344 (b)). The decree of the Supreme Court of Delaware sought to be reviewed was entered February 14, 1941 (R. 236-240); and this petition is filed within three months from the date of that decree.

The question involved is substantial because the Georgia judgment established the title of the Executors to the stock in question, valued at more than half a million dollars, and the effect of the Delaware decision was a denial of the Executors' title, although protected by and especially set up and claimed under the Constitution of the United States. The question involved is also of general importance and substantial because the effect of the Delaware decision is that there can be no final determination of the succession or of the question of whether an administration is general and domiciliary or local even though all persons interested in the succession are personally before a court having jurisdiction of the subject matter. The Delaware decision permits a dissatisfied litigant in such a proceeding to have an administrator appointed in *ex parte* proceedings in another state, and thereby prevent the judgment in the first state, to which he is a party, from being given full faith and credit

in a third state where assets of the decedent are located. A ruling by this Court would furnish a substantial contribution to the law governing the administration of estates where the full faith and credit clause of the Federal Constitution is involved. The jurisdiction of this Court to review the federal question decided by the Supreme Court of Delaware is sustained by the following cases:

Andrews v. Andrews, 188 U. S. 14
Carpenter v. Strange, 141 U. S. 87, 103
Baker v. Baker, Eccles & Co., 242 U. S. 394
Tilt v. Kelsey, 207 U. S. 43
Great Western Telegraph Co. v. Purdy, 162 U. S. 329, 334
Davis v. Davis, 305 U. S. 32
Stoll v. Gottlieb, 305 U. S. 165

How and When the Federal Question Was Raised

The federal question was raised in petitioners' pleading (R. 13-50, 91-112); in a motion by petitioners for a decree notwithstanding answer (R. 115-116), at the trial in the Chancery Court before any evidence on domicile was offered (R. 186, 188, 190, 197, 199), objection to such evidence having been made applicable to all evidence on the subject (R. 199) and the Chancellor reserving the question of the effect of the Georgia judgment and therefore of the admissibility of such evidence for later determination; in petitioners' briefs in the Supreme Court of Delaware; and on motion for reargument in the Delaware Supreme Court (R. 232-235). The Delaware Chancellor before whom the case was tried did not discuss or decide the federal question. In his opinion he examined the evidence on domicile, made a finding of fact that decedent died domiciled in Georgia and stated that this rendered it unnecessary for him to consider the question of the effect of the Georgia judgment

(R. 181). The Supreme Court of Delaware in reversing the lower court, considered and decided the federal question adversely to the contention of petitioners (R. 225-232).

III.

The Question Presented

Does the decision and decree of the Delaware Supreme Court, holding that the Georgia judgment does not conclusively establish petitioners' title to the stock in question for administration as domiciliary representatives of the estate, as against the Administrator c. t. a. appointed by the New York Court in an *ex parte* proceeding, give to the Georgia judgment that full faith and credit to which it is entitled under Article IV, Section 1, of the Federal Constitution, the judgment being valid in Georgia and binding on all persons interested in the succession?

IV.

Reasons Relied On for the Allowance of the Writ

1. The Delaware Supreme Court, in violation of Article IV, Section 1, of the Federal Constitution, failed to give full faith and credit to a judgment affirmed by the Supreme Court of Georgia. That judgment conclusively established decedent's domicile against all persons entitled to be heard as to the succession to decedent's estate and thereby vested petitioners with title to the stock in question for the purpose of administration. The decision of the Delaware Supreme Court fails to give full faith and credit to that judgment in that the court re-examined the question of domicile that was conclusively determined by the Georgia judgment against all persons interested in the succession and, on the basis of a contrary determination as to decedent's domicile

(although it had no right to enter upon the inquiry), held that the Administrator c. t. a. was entitled to the stock.

2. The Delaware Supreme Court has decided a federal question of substance in a way probably not in accord with applicable decisions of this Court. The effect of the Delaware decision is that where all parties interested in the succession have been brought before a court having jurisdiction of the subject matter that court cannot determine whether an administration under its supervision shall be general or local so as to establish the title of representatives who qualify to decedent's personalty wherever located. Under principles announced and applied by this Court, and in decisions of state courts some of which have been cited with approval by this Court, a court having jurisdiction of the subject matter and of all persons interested in the succession can conclusively determine whether an administration shall be general or local. Some of these decisions are:

Thormann v. Frame, 176 U. S. 350
Overby v. Gordon, 177 U. S. 214
Tilt v. Kelsey, 207 U. S. 43
Burbank v. Ernst, 232 U. S. 162
Baker v. Baker, Eccles & Co. 242 U. S. 394
Thomas v. Morrisett, 76 Ga. 384
In re Fischer's Est., 180 A. 633 (N. J.)
In re Willett's Appeal, 50 Conn. 330

Once determined in such a proceeding the judgment cannot be attacked in any other state. The effect of the Delaware decision is that a dissatisfied litigant in such a proceeding may go into another state, have an administrator appointed in *ex parte* proceedings, and, in defiance of and ignoring the previous adjudication, have the question of domicile litigated all over again in a contest between the

two sets of representatives in a third state where property of the decedent is located.

3. The right of the Delaware Court to inquire into the jurisdiction of the court rendering the Georgia judgment did not include the right to examine factual issues on which jurisdiction depended, where those issues had been determined between the real parties at interest in the court in which the judgment was rendered.

Davis v. Davis, 305 U. S. 32
Sovereign Camp of Woodmen of the World v. Bolin, et al., 305 U. S. 66
Stoll v. Gottlieb, 305 U. S. 165

WHEREFORE, your petitioners respectfully pray that a writ of certiorari issue under the seal of this Court, directed to the Supreme Court of the State of Delaware, commanding said court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the said Supreme Court of Delaware had in the case numbered and entitled on its docket, No. 2, January Term, 1940, The New York Trust Company, a corporation of the State of New York, as Administrator, c. t. a. of the Estate of Julia M. Hungerford, deceased, one of the respondents below, Appellant, *versus* Julian Riley and Hughes Spalding, as Executors of the Estate of Julia M. Hungerford, deceased, one of the respondents below, Appellee, and Coca-Cola International Corporation, a corporation of the State of Delaware, Complainant below, Appellee, and The New York Trust Company, a corporation of the State of New York, as Temporary Administrator of the Estate of Julia M. Hungerford, deceased, one of the original respondents below, Appellee, to the end that this cause may be reviewed and determined by this Court as provided for by the statutes of

the United States and that the judgment of said Supreme Court of Delaware be reversed, and for such other relief as to this Court may seem proper.

JULIAN RILEY AND HUGHES SPALDING AS EXECUTORS OF THE ESTATE OF JULIA M. HUNGERFORD, DECEASED,

Petitioners,

By DAN MACDOUGALD,
JAMES A. BRANCH,
ROBERT S. SAMS,
Atlanta, Georgia;

AARON FINGER,
Wilmington, Delaware,
Attorneys for Petitioners.

Of Counsel:

MACDOUGALD, TROUTMAN & ARKWRIGHT,
Atlanta, Georgia.

RICHARDS, LAYTON & FINGER,
Wilmington, Delaware.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Opinions Below

The opinion of the Supreme Court of Delaware is reported in 16 Atl. (2d) 772, and appears in the Record at pages 203-232. The opinion of the trial court is reported in 8 Atl. (2d) 511 and is set out in the Record at pages 150-181. The opinion of the trial court on a motion for judgment notwithstanding answer is reported in 2 Atl. (2d) 290, and appears in the Record at pages 134-143.

Jurisdiction

A full statement of the grounds on which it is claimed that this Court has jurisdiction is contained in Section II of the petition for writ of certiorari, and the same is hereby adopted and made a part of this brief.

Statement of the Case

The facts in this case are set out in Section I of the petition for writ of certiorari, and the statement there made is hereby adopted and made a part of this brief.

Specifications of Errors

The Supreme Court of Delaware erred in holding that the Georgia judgment did not conclusively establish the title of the Executors to the stock in question for administration as the domiciliary or general representatives of the estate of Julia M. Hungerford, and that such judgment was not binding on the New York Administrator in a dispute as to the title for administration to the stock of a Delaware corporation. The opinion and decree of the Supreme Court of Delaware failed to give the full faith and credit to which

the Georgia judgment was entitled in the Courts of Delaware under Article IV, Section 1, of the Constitution of the United States.

Summary of Argument

A synopsis of the argument is set forth in the index and for the sake of brevity is omitted here.

Argument

1. The court which rendered the Georgia judgment had jurisdiction

(a) over the subject matter, it being a court of general jurisdiction of matters relating to probate and to decedent's estates.

Veatch v. Rice, 181 U. S. 293
Maybin v. Knighton, 67 Ga. 103
Tant v. Wigfall, 65 Ga. 412

(b) over the parties, personal service having been obtained upon the parties thereto.

2. The Georgia judgment was binding upon all the world upon any question relating to the succession to the title to any personalty of the decedent, because the parties to the judgment include all persons who could have any possible interest in the succession.

3. The litigation in the Delaware Courts involved the question of the succession to the title to certain shares of stock. (The right of the State of New York to claim estate or inheritance taxes was not involved, and it is not contended that the Georgia judgment bars the State of New York from making any such claim, based upon an alleged domicile of the decedent in New York). The Geor-

gia judgment was therefore conclusive upon the Delaware Courts, the Executors having claimed the right to have full faith and credit accorded to the Georgia judgment as required by the Federal Constitution.

4. By examining the question of decedent's domicile and admitting evidence thereon (over the objection of the Executors), the Delaware Courts failed to give full faith and credit to the Georgia judgment because the determination by the Georgia Courts that decedent was domiciled in Georgia at the time of her death was conclusive whenever and wherever any question relating to the succession and based upon an alleged domicile elsewhere was raised.

Thormann v. Frame, 176 U. S. 350
Overby v. Gordon, 177 U. S. 214
Tilt v. Kelsey, 207 U. S. 43
Burbank v. Ernst, 232 U. S. 162
Baker v. Baker, Eccles & Co., 242 U. S. 394; 162 Ky. 683; 173 S. W. 109; L.R.A., 1917C, p. 171
Thomas v. Morrisett, 76 Ga. 384
In re Fischer's Est., 180 Atl. 633 (N. J.)
In re Willett's Appeal, 50 Conn. 380

The Georgia courts had before them all possible distributees of decedent's estate, and hence it was possible to have a single controlling decision upon the succession. This Court in *Baker v. Baker, Eccles & Co.*, 242 U. S. 394, supra, considered the question imposed by counsel in that case as to how it would be possible to determine judicially the domicile where an intestate left personalty in different states with different laws of distribution and with possible dis-

tributees residing in different jurisdictions, and said (page 404):

> ". . . The answer is clear: Unless all possible distributees can be brought within the jurisdiction of a single court having authority to pass upon the subject-matter, either by service of process or by their voluntary appearance, it must in many cases be impossible to have a single controlling decision upon the question. . . ."

The Supreme Court of Georgia held that the jurisdiction of the Georgia Courts to render the judgment depended upon a determination of the factual issue of domicile and that the court had jurisdiction to determine that issue, saying:

> "The application alleged that the Testatrix resided in Fulton County, and, under this and other allegations made, must be construed as an application to probate the will generally as a will of a person domiciled in that County. *It was thus necessary in order to admit the will to probate to show that the decedent was domiciled in Fulton County at the time of her death; otherwise the Court of Ordinary would not have had jurisdiction.*" (R. 108; italics ours).

5. Where the jurisdiction of a court depends upon the existence of a particular fact, and the court determines that factual question, the parties to the proceeding are bound by that determination and the judgment is entitled to full faith and credit in other states.

Davis v. Davis, 305 U. S. 32
Sovereign Camp of Woodmen of the World v. Bolin, et al., 305 U. S. 66
Stoll v. Gottlieb, 305 U. S. 165

Also cases cited under Section 4, supra.

The statement of this Court in *Stoll v. Gottlieb*, supra (at page 172) is equally applicable to the present case:

> "Courts to determine the rights of parties are an integral part of our system of government. It is just as important that there should be a place to end as that there should be a place to begin litigation. After a party has his day in court, with opportunity to present his evidence and his view of the law, a collateral attack upon the decision as to jurisdiction there rendered merely retries the issue previously determined. There is no reason to expect that the second decision will be more satisfactory than the first."

6. The Georgia judgment was binding upon the New York Administrator in the contest in Delaware involving the succession to the title to assets of the estate, notwithstanding that the New York Administrator was not a party to the Georgia proceedings and judgment, because it was not entitled to be a party thereto and all persons interested in the question of the succession were parties. When decedent's husband, himself a party to the Georgia litigation, and during the progress of the Georgia litigation, had the Administrator appointed in New York in *ex parte* proceedings, he could not thereby in effect nullify in other states, the decision of the Georgia Courts upon the factual question of domicile that was in issue and upon which the jurisdiction of the Georgia Courts depended. The New York Administrator acquired no interest in the succession over, above and unrelated to the interest of any possible distributee; and neither the State of New York nor anyone else claiming as a creditor is affected by the finding of domicile in the Georgia proceedings. A creditor or tax claimant is not entitled to be heard on the probate of a will and hence, after the succession has been determined, cannot dispute the title or right of possession of the personal rep-

resentative whose title has been established in the probate proceeding.

Hooks v. Brown, 125 Ga. 122; 53 S. E. 583
Dunsmuir v. Scott, 217 Fed. 200
Tilt v. Kelsey, 207 U. S. 43
Schouler on Wills, Vol. 2, p. 846, Sec. 746

It follows therefore that, since the Georgia judgment is binding upon all possible distributees, including Hungerford because he was a party to and participated in the Georgia litigation, it is also binding upon the New York Administrator as representative of the distributees. Under the circumstances, the New York Administrator is the same person in law as Hungerford. In *Chicago, Rock Island & Pacific Rwy. Co. v. Schendel*, 270 U. S. 611, this Court refused to distinguish between the widow and sole heir, and the administrator, holding the latter was bound by a judgment to which the former was a party, on the ground that they were in legal effect the same. Said this Court, (page 620):

> "Identity of parties is not a mere matter of form, but of substance. Parties nominally the same may be, in legal effect, different. Bigelow on Estoppel, 6th ed. 145; and parties nominally different may be, in legal effect, the same."

Citing and following the *Schendel* case are:

Keith v. Willers Truck Service, Inc., 266 N. W. 256 (S. D.); 104 A. L. R. 1471
Lucy Haines Gibson v. Solomon, 136 Ohio St. 101; 23 N. E. (2d) 996; 125 A. L. R. 903
St. Louis-S. F. R. Co. v. Stuckwish, 137 Okla. 251; 279 Pac. 683

Directly in point are the cases of:

Thomas v. Morrisett, 76 Ga. 384
In re Willett's Appeal, 50 Conn. 330
In re Fischer's Estate, 180 Atl. 633 (N. J.)

This Court recently denied certiorari in *Roberts v. Bathurst*, 112 Fed (2d) 543 (5 C. C. A.), being a case almost identical in principle with the instant case and which held that the personal representative had no independent status from that of sole beneficiary, and that a judgment binding on the sole beneficiary was binding upon the Administrator.

7. The Georgia judgment determined that the Georgia administration was domiciliary and general and not ancillary or local. Such a judgment is conclusive where all persons interested in the distribution of the estate are parties to the judgment.

Thormann v. Frame, 176 U. S. 350
Overby v. Gordon, 177 U. S. 214
Tilt v. Kelsey, 207 U. S. 43
Burbank v. Ernst, 232 U. S. 162
Baker v. Baker, Eccles & Co., 242 U. S. 394; L. R. A. 1917C, 171
Thomas v. Morrisett, 76 Ga. 384
In re Fischer's Estate, 180 Atl. 633 (N. J.)
In re Willett's Appeal, 50 Conn 330

8. The Delaware Supreme Court lost sight of the fact that its first duty was to determine whether it had the right to enter upon an inquiry as to domicile if it was to give full faith and credit to the Georgia judgment. It nevertheless made that inquiry without determining the Federal question and, after making a finding of domicile in New York, proceeded to hold that the New York Administrator was entitled to the stock *because of its finding of a New York domicile for decedent*. In so doing, it failed to

give to the Georgia proceedings the full faith and credit to which they are entitled.

Conclusion

The decision of the Delaware Supreme Court is of particular importance in view of the large number of corporations operating on a nation-wide scope under Delaware charters. Heretofore it has been generally recognized that the appointment of an executor by a court of competent jurisdiction wherein the domicile of the decedent was determined, and in which all persons interested in the succession were before the court, vested in the personal representative the title to shares of stock owned by the decedent and enabled such personal representative to transfer a good title thereto in the course of administration. The Delaware decision strips the Georgia judgment of the protection which it has heretofore been considered that such judgments have under the full faith and credit clause of the Federal Constitution and, if allowed to stand, will produce hardships in the administration of decedent's estates.

It is respectfully submitted, therefore, that the petition for writ of certiorari should be granted.

DAN MACDOUGALD,
JAMES A. BRANCH,
ROBERT S. SAMS,
Atlanta, Georgia;

AARON FINGER,
Wilmington, Delaware,
Attorneys for Petitioners.

Of Counsel:
MACDOUGALD, TROUTMAN & ARKWRIGHT,
Atlanta, Georgia.

RICHARDS, LAYTON & FINGER,
Wilmington, Delaware.